

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

July 9, 2019

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Bernhardt:

The Committee on Natural Resources majority is investigating the Trump Administration's reinstatement of two decades-long mineral leases in northern Minnesota.¹ The majority alleges that the reinstatements were politically motivated.² Recent reporting, however, suggests that the Obama Administration's last-minute decisions to withdraw and deny these previously renewed leases were, in fact, politically motivated.³ Those actions taken by the Obama Administration themselves merit congressional investigation.

The two leases in question were issued in 1966 and renewed in 1989 and 2004.⁴ On December 15, 2016, the Obama Administration denied an application to renew the leases.⁵ The U.S. Forest Service (USFS) then sought approval from the Bureau of Land Management (BLM) for a 20-year mineral withdrawal.⁶ USFS also imposed a "temporary" two-year mineral withdrawal pending the completion of an environmental impact statement (EIS) by the USFS and BLM to determine if the 20-year withdrawal should be approved.⁷ The average USFS EIS

¹ Letter from Rep. Raúl Grijalva, Chairman, H. Comm. on Natural Resources, Rep. Betty McCollum, Chairman, Interior Environment Appropriations Subcomm. of the H. Comm. on Appropriations, and Rep. Alan S. Lowenthal, Chairman, H. Subcomm. on Energy and Mineral Resources of the H. Comm. on Natural Resources, to Hon. David Bernhardt, Acting Sec'y, U.S. Dep't of the Interior and Hon. Sonny Purdue, Sec'y, U.S. Dep't of Agriculture (Mar 1, 2019).

² *Id.*

³ Kimberly A. Strassel, *A Democrat Deflates Another Trump 'Scandal'*, THE WALL ST. J. June 6, 2019, <https://www.wsj.com/articles/a-democrat-deflates-a-trump-scandal-11559862259>.

⁴ OFFICE OF THE SOLICITOR, U.S. DEP'T. OF THE INTERIOR, M-37049, REVERSAL OF M-37036, "TWIN METALS MINNESOTA APPLICATION TO RENEW PREFERENCE RIGHT LEASES (MNES-01352 AND MNES-01353)" (Dec. 22, 2017) (<https://www.doi.gov/sites/doi.gov/files/uploads/m-37049.pdf>).

⁵ Juliet Eilperin, *Feds Deny Request to Renew Mining Lease in Minnesota Wilderness Area*, THE WASH. POST, Dec. 15, 2016, https://www.washingtonpost.com/news/energy-environment/wp/2016/12/15/obama-administration-denies-mining-leases-near-boundary-waters-wilderness-in-minnesota/?utm_term=.81d4b2ee41e1.

⁶ U.S. FOREST SERVICE, U.S. DEP'T. OF AGRICULTURE, APPLICATION FOR WITHDRAWAL: SUPERIOR NATIONAL FOREST (Jan. 5, 2017) (https://www.fs.usda.gov/nfs/11558/www/nepa/105871_FSPLT3_3924868.pdf).

⁷ *Id.*

takes over four years to complete.⁸ The average BLM EIS takes over six years.⁹ The Obama Administration's decision effectively ended the possibility of developing the leases and deprived northern Minnesota of an opportunity to generate thousands of well-paying jobs.¹⁰

On January 19, 2017, one day before President Trump's inauguration, USFS published notice of its mineral withdrawal application to BLM and officially announced the temporary mineral withdrawal.¹¹ The circumstances surrounding the denial of the lease renewals and the mineral withdrawal application were unusual. To justify denying the lease renewals, the DOI's Solicitors Office drafted a legal opinion interpreting the identically worded 1989 and 2004 lease renewals "very differently."¹² Moreover, the "temporary" withdrawal was implemented without allowing for public input through the standard notice and comment period.

A December 16, 2016 email¹³ from Senator Amy Klobuchar (D-MN) to then-Secretary of Agriculture Tom Vilsack, published by *The Wall Street Journal*, criticized the withdrawal process and the political motivations driving the Obama Administration's decision-making:

I have always believed in you and what you stand for and will continue to do that but this just floored me.

Trump will reverse this. When you guys leave and are out talking about a job message for rural America, I will be left with the mess and dealing with the actual jobs. But you guys sure got a good story in the New York Times.

It should have been handled through the normal process. It wasn't. I still don't have answers to my questions. I asked them in writing in July. I will now ask them of the [T]rump [A]dministration....which is ironic because the most likely reason I did not get answers to my questions is why we have the [T]rump [A]dministration to begin with. Who cares about answering some pesky questions from a woman senator from the Midwest when you guys and the White House and the activists have all the politics down, right? (*emphasis added*)

⁸ CHARLES P. NICHOLSON ET AL., NATIONAL ASSOC. OF ENVTL. PROFESSIONALS (NAEP), ANNUAL NEPA REPORT 2016 OF THE NATIONAL ENVIRONMENTAL POLICY ACT PRACTICE 16 (June 2017) (https://naep.memberclicks.net/assets/annual-report/2016/nepa_annual_report_2016.pdf).

⁹ *Id.*

¹⁰ Press Release, Twin Metals Minnesota, Twin Metals Receives Support from Minnesota Officials and Labor and Community Allies (Dec. 15, 2016); *see also* John Myers, *U.S. House Approves Bill to Ease Way For Twin Metals Mining Near BWCA*, TWIN CITIES PIONEER PRESS, Nov. 30, 2017.

¹¹ Notice of Application for Withdrawal and Notification of Public Meeting; Minnesota, 82 Fed. Reg. 12, 6639 (Jan. 19, 2017).

¹² *Supra* note 4.

¹³ Emails from Sen. Amy Klobuchar to Hon. Tom Vilsack, Sec'y, U.S. Dep't of Agriculture (Dec. 16, 2016, 08:19 CST) (*available at* http://wsj.com/public/resources/documents/AK060719.pdf?mod=article_inline).

In a subsequent message¹⁴ to Secretary Vilsack, Senator Klobuchar again stressed the political nature of the Obama Administration's decision. Furthermore, Senator Klobuchar believed that the EIS would not be conducted in good faith and that its findings were a foregone conclusion:

I repeatedly expressed concerns about using the lease denial process after they had the leases for years. **[Secretary of the Interior] Sally Jewell actually said publicly what would happen before comments were even submitted and deliberations made. Oops.** It will now end up in a lawsuit and everyone will raise money off of it and do attack ads based on it on both sides. Somehow [T]rump will reverse the decision or a court will. That will be the outcome of this big announcement.

... I am not for or against this project but I just wanted a fair process based on science that told us the truth. That is not how this feels. (*emphasis added*).

Senator Klobuchar's predictions proved accurate. On September 6, 2018, the USFS cancelled the EIS and reinstated the two leases.¹⁵ In response, environmental groups, such as the Center for Biological Diversity, sued and used the resulting controversy as a fundraising opportunity.¹⁶ Seeming to confirm Senator Klobuchar's suspicions, Obama Administration Interior Secretary Jewell's publicly available calendar shows she attended a December 2, 2016 meeting titled, "Check-in re MN," just weeks before the lease applications were denied and the withdrawals were announced.¹⁷ The calendar does not record whether external parties were present. Contrary to current DOI practice, Secretary Jewell did not separately document meetings with outside groups. Secretary Jewell's practice was not to seek approval for external meetings from DOI's ethics office despite her ties to the outdoor recreation industry, which vocally opposed the lease renewals.¹⁸

Given her foresight, Senator Klobuchar's complaints about the lease withdrawal process, and her belief that the result of the environmental review was predetermined, are extremely concerning. To date, the Committee majority has focused its investigation on the Trump Administration's reinstatement of the two decades-long mineral leases. The majority has requested a range of documents from USDA, DOI, and the White House. In response, USDA and DOI have provided more than 12,000 pages of documents.

¹⁴ *Id.*

¹⁵ Press Release, U.S. Dep't. of Agriculture, USDA Removes Roadblock to Mineral Exploration in Rainy River Watershed (Nov. 19, 2018).

¹⁶ Press Release, Center for Biological Diversity, Lawsuit Aims to Prevent Mining Pollution Near Boundary Waters Wilderness in Minnesota (June 25, 2018) (https://www.biologicaldiversity.org/news/press_releases/2018/Boundary-Waters-06-25-2018.php).

¹⁷ Schedule Dec. 2, 2016 of Hon. Sally Jewell, Sec'y, U.S. Dep't of the Interior (<https://www.doi.gov/sites/doi.gov/files/uploads/17-00185ca.pdf>).

¹⁸ Press Release, Outdoor Industry Assoc., Help Protect the Boundary Waters Today (Nov. 28, 2017) (<https://outdoorindustry.org/article/help-protect-boundary-waters-today/>).

It appears the Committee majority's investigative focus is misplaced. The Obama Administration's denial of the lease renewals and initiation of the mineral withdraw constituted an anomalous regulatory action. Senator Klobuchar's emails suggest that the Obama Administration misled Congress while acting in the interests of unnamed "activists" to initiate a bad faith environmental review designed to reach a predetermined outcome.

To better inform the Committee of the circumstances surrounding the lease denials and mineral withdrawals in northern Minnesota, we request that the Department provide the following documents and information as soon as possible, but no later than July 24, 2019:

1. All documents and communications, including but not limited to, emails from or to employees of DOI, USDA, USFS, the White House, or external organizations, including but not limited to, environmental, conservation, or outdoor industry-related organizations, from January 1, 2009 through February 28, 2017 referring or relating to:
 - a. The 2016 decision by DOI to cancel the Twin Metals' leases and renewal application;
 - b. The 2016 decision by USFS to submit an application to withdraw 234,328 acres of the Rainy River Watershed from mineral leasing;
 - c. Public statements or commitments to Congress, Minnesota state or local government entities, private companies, non-profit organizations, law firms, or any other non-governmental party on whether DOI or USDA was considering cancelling the Twin Metals lease.
2. All documents and communications, including but not limited, emails from January 1, 2009 through February 28, 2017 referring or relating to any additional proposed regulatory and/or agency actions in the Superior National Forest.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob Bishop".


Rob Bishop
Ranking Republican

A handwritten signature in blue ink, appearing to read "Louie Gohmert".

Louie Gohmert
Ranking Republican
Subcommittee on
Oversight and Investigations

A handwritten signature in blue ink, appearing to read "Paul A. Gosar, MS".

Paul Gosar
Ranking Republican
Subcommittee on
Energy and Mineral Resources

A handwritten signature in blue ink, appearing to read "Pete Stauber".

Pete Stauber
Member of Congress